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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,905	06/13/2006	Johann Schenk	Wuesthoff-8 (9A-98 448)	5005
26479 7590 09/26/2008 STRAUB & POKOTYLO 788 Shrewsbury Avenue TINTON FALLS, NJ 07724			EXAMINER PHAM, HOA Q	
			ART UNIT 2886	PAPER NUMBER
			MAIL DATE 09/26/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/582,905

Applicant(s)

SCHENKL, JOHANN

Examiner

Hoa Q. Pham

Art Unit

2886

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-13, 15, 18, 21 and 27-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-13, 15, 18, 21 and 27-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 May 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Drawings

2. The drawings filed on 5/30/08 are accepted.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 11-13, 15, 18, 21, 27-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schenkl et al (2003/0142316) in view of Cummins (5,485,013).

Regarding claims 11-13, Schenkl et al (of record) discloses a sensor for transmission measurement in a washing machine or dishwasher with a carrier (26), a transmitter (12) attached to the carrier to emit a transmitter beam, a receiver (14) attached to the carrier to receive the beam generated by the transmitter (figures 1-2). The carrier comprises a first leg (8) to which the transmitter (12) is attached and a

second leg (10) to which the receiver (14) is attached opposite the transmitter. Schenkl does not explicitly teach a diaphragm system arranged on the carrier spaced from the transmitter or arranged on the carrier spaced from receiver. However, such a feature is known in the art as taught by Cummins. Cummins (of record), from the same field of endeavor, discloses a turbidity sensor in which the diaphragm (i.e., plates 30 and 32 in figures 4-5) are arranged spaced from the transmitter (10). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include in Schenkl a diaphragm system spaced from the transmitter or spaced from the receiver. The rationale for this modification would have arisen from the fact that using such diaphragm system would prevent unwanted light that may enter the detector system as suggested by Cummins (column 4, line 65 through column 5, line 10).

Regarding claims 15, 18, and 21; figure 2 of Schenkl et al shows that leg (10) is longer than leg (8) and a temperature sensor (18) arranged on the long leg.

Regarding claims 27-28, it is noted that when the diaphragms located in front of the transmitter and the receiver, the distance between the diaphragm opening at the transmitter and the diaphragm opening at the receiver is greater than the space between the transmitter (or receiver) and the diaphragm opening (see figure 2 of Schenkl et al).

Regarding claims 29-31, it is inherent that when the diaphragm is used in front of the light source (i.e., LED) or receiver, the diaphragm would limit some areas of the main lobe.

Response to Arguments

5. Applicant's arguments filed 5/30/08 have been fully considered but they are not persuasive.

a. Applicant requested for an interview before action; however, Examiner thought it is not necessary to have an interview because it does not help to make the case in condition for allowable.

b. Applicant's remarks argue that the references do not teach or suggest a diaphragm system arranged separate from the carrier. As mentioned above, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include in Schenkl et al a diaphragm system taught by Cummins. The arrangement of the diaphragm system is obvious to one skill in the art, for example, attached the diaphragm to the figures 8 and 10 of Schenkl et al, since it has been held that rearranging parts of an invention involves only routine skill in the art. In *Re Japikse*, 86 USPQ 70.

In view of the foregoing, it is believed that the rejection under 35 USC 103 is proper.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Following references relate to turbidity sensor: Schenkl et al (6,771,373), Kushner et al (4,152,070), Kunz et al (6,456,379) and Manz et al (2004/0135089 A1).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hoa Q. Pham whose telephone number is (571) 272-2426. The examiner can normally be reached on Monday through Friday, 8:00AM TO 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tarifur Chowdhury can be reached on (571) 272-2287. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hoa Q. Pham/
Primary Examiner, Art Unit 2886

HP
September 22, 2008